IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.114 of 1992
Date of decision:16.11.2006

The Commissioner of Income tax Jalandhar

....Petitioner

versus

Shri Ajit Singh Jhikka C/o M/s Sutlej Finance (P) Limited, Jalandhar

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, (for short, 'the Tribunal') arising out of its order dated 21.9.1990 in ITA No.219/ASR)/1987, for the assessment year 1982-83:-

> "Whether on the facts and the circumstances of the case, the Tribunal was justified in upholding the decision of the AAC who had directed the Assessing officer to set off short term capital loss earned by the assessee against other business income before allowance of depreciation?"

The assessee claimed set off of short term capital loss on account of sale of land and building which was not allowed by the Assessing Officer on the ground that income of the assessee through other

sources was negative. It may be mentioned that finally, assessed loss of the assessee was of Rs.60514/-. The assessee claimed that loss of Rs.41,412/- on account of short term capital loss be set off against other income before allowing depreciation as before that there was positive income of Rs.1,98,362/-. The appellate authority upheld the claim of the assessee, which was further upheld by the Tribunal, relying upon Section 71(3) of the Income Tax Act, 1961 (for short, 'the Act').

We have heard learned counsel for the revenue and perused the findings recorded.

During the relevant assessment year, provisions of Section 71 (3) of the Act read as under:-

> "71(3). Where in respect of any assessment year the net result of the computation under section 48 to 55 in respect of capital gains relating to short-term capital assets is a loss and the assessee has income assessable under any head of income other than "capital gains", the assessee shall subject to the provisions of this chapter, be entitled to have such loss set off against the income aforesaid."

The findings of the Tribunal, which are quite sketchy are reproduced hereunder:-

> "The word used is 'income' against which the set off has to be. The words used are not 'total income' as computed under the Act. Hence the impugned order merits no interference at this level being based on proper appreciation of facts and law. The same stands upheld and the appeal fails."

On a perusal of order of the Tribunal, we could not make out as on what reasoning the Tribunal had proceeded to dismiss the appeal of the revenue. The profits and gains of business and profession chargeable to tax under Section 28 of the Act are computed as per provisions of Sections 29 to 43 of the Act. Depreciation is one of the deduction to be made while computing income under this head. Determination of income under the head of income from business and profession will not be complete unless all the provisions have been given effect to. Thus, there is no reason to accept the plea of the assessee that for the purpose of set off of short term capital loss,

income from business should be taken before allowing depreciation.

Accordingly, the question referred is answered in favour of the revenue and against the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 16, 2006
'gs'

(Rajesh Bindal)
Judge